Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Developing a Unified Intercarrier Compensation Regime	)	
	)	
	)	CC DOCKET NO. 01-92
	)	
T-Mobile *et al.* Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs	)	

EX PARTE COMMENTS OF
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
AND CROSS-PETITION FOR LIMITED CLARIFICATION

SUPRA TELECOMMUNICATIONS
AND INFORMATION SYSTEMS, INC.

By its Attorneys

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SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.
AND CROSS-PETITION FOR LIMITED CLARIFICATION

Supra Telecommunications and Information Systems, Inc. ("Supra"), by its undersigned counsel, hereby files these Ex Parte Comments and Cross-Petition, pursuant to Sections 1.1006, 1.415 and 1.419 of the Federal Communications Commission's (the "FCC" or the "Commission") rules, in response to the Petition for Limited Clarification or For Partial Reconsideration (the "Petition") filed by MetroPCS Communications, Inc. ("MetroPCS") on April 29, 2005 and respectfully petitions for limited clarification of the Commission's *Declaratory Ruling and Report and Order*[1] (the "Order") issued in response to the above-captioned Petition for Declaratory Ruling[2] (the "T-Mobile Petition"). In support thereof, Supra states as follows:

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1 *In the Matter of Developing a Unified Intercarrier Compensation Regime, T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs*, Declaratory Ruling and Report and Order, CC Docket No. 01-92, 2005 FCC LEXIS 1212, FCC 05-42 (rel. February 24, 2005) (the "Order").

2 *In the Matter of Developing a Unified Intercarrier Compensation Regime,* T-Mobile et al. Petition for Declaratory Ruling Regarding Incumbent LEC Wireless Termination Tariffs, CC Docket No. 01-92 (filed September 6, 2002) (the "T-Mobile Petition").

I. SUMMARY

MetroPCS seeks to avoid having any reciprocal compensation obligations with regards to the transport and termination of commercial mobile radio service ("CMRS") traffic by CLECs, and thereby continue to receive such service for free under the guise of a default "bill and keep" arrangement. The FCC should reject MetroPCS' arguments[3] and instead, take a fair and reasonable approach (as it has with regards to ILECs), consistent with the original intentions of the reciprocal compensation regime, and allow all carriers (including CLECs) to recover their costs for terminating another carriers' traffic.[4]

The FCC should find that CLECs are allowed, at the very minimum, to rely upon and enforce reasonable rates contained in state-filed tariffs for the period during which those tariffs have been in effect. As a result of the Order, it is clear that while ILECs, on a going forward basis, may no longer rely on state-filed wireless termination tariffs, they can rely on such tariffs to support bills and enforce payment obligations looking backward.[5] However, nothing in the Order impairs a CLEC's prior or going-forward right to rely upon such tariffs, in the absence of a negotiated agreement. Without the ability to rely on such tariffs, if the relief requested by MetroPCS is granted, CMRS providers will have no incentive to negotiate any type of reciprocal compensation agreements with CLECs. Instead, CLECs will be unable to recover their costs and CMRS providers will be able to escape paying CLECs any reciprocal compensation for the transport and termination of their traffic. Unlike the situation with ILECs – which, the Commission has now made clear, can request

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3 As far as Supra is aware, no CLEC in Florida has been able to recover the costs it incurs in terminating traffic originated by MetroPCS. Yet the ILEC continues to bill Supra, at state PSC ordered rates, thousands of dollars each month to perform the switching functions needed to terminate wireless calls, with no way for Supra to block or otherwise refuse such traffic. Since June 2001 when Supra first started carrying facilities based traffic, Supra has not recovered one cent of its cost from MetroPCS for terminating MetroPCS' traffic.

4 See *In the Matter of the Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services*, Declaratory Ruling, 2 FCC Rcd. 2910, (rel. May 18, 1987) at ¶ 45, where the FCC stated, "we expected each entity to recover the costs of switching traffic for the other entity's network."

interconnection from a CMRS provider and invoke the negotiation and arbitration procedures set forth in Section 252 of the Communications Act of 1934, as amended (the "Act") – CLECS cannot invoke the procedures of Section 252 and have nothing to offer CMRS providers as an incentive to engage in negotiations to establish reciprocal compensation arrangements. For this reason, the Commission's holding in the Order regarding the effect of state wireless termination tariffs on a going-forward basis should be limited to ILECs. However, for the very same reason the Commission allowed ILECs to rely on and enforce state wireless termination tariffs for the period prior to the Order, the Commission should also allow CLECs to rely on and enforce state wireless termination tariffs - not only for the period prior to the Order, but also to continue to do so until and unless CLECs are afforded similar protections to those that the ILECs were granted (i.e. the ability to invoke the procedures of section 252).

II. BACKGROUND

1. The T-Mobile Petition sought a declaratory ruling that wireless termination tariffs were not a proper mechanism for **incumbent** local exchange carriers ("ILECs") to establish charges for the transport and termination of wireless traffic.[6]

2. In the Order, the Commission held that "[b]ecause the existing rules do not explicitly preclude tariffed compensation arrangements, we find that incumbent LECs were not prohibited from filing state termination tariffs and CMRS providers were obligated to accept the terms of applicable state tariffs."[7]

3. The Commission further acknowledged "that LECs may have had difficulty obtaining compensation from CMRS providers because LECs may not require CMRS providers to negotiate

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5 See the Order at para. 9.
6 T-Mobile Petition at 1, 14 and Petition at p. 2, para. 1.
7 Order at para. 9.

interconnection agreements or submit to arbitration under section 252 of the Act."[8]

4. On a prospective basis, the Commission amended its rules prohibiting ILECs from imposing compensation obligations for non-access CMRS traffic pursuant to tariff, but protected the ability of ILECs to obtain such compensation by allowing ILECs to invoke the negotiation and arbitration procedures set forth in Section 252 of the Act.[9]

5. Supra is seeking a clarification of the Order. Specifically, Supra requests that the Commission expressly clarify that nothing in the Order impairs a CLEC's prior right, or precludes a CLEC's going-forward right, to rely upon state wireless termination tariffs, in the absence of a negotiated reciprocal compensation agreement. In the alternative, Supra seeks a clarification that section 20.11 of the Commission's rules, 47 C.F.R. § 20.11, allows CLECs the same or similar protection afforded ILECs – namely the ability to request interconnection from a CMRS provider and invoke negotiation and arbitration procedures similar to those set forth in Section 252 of the Act.

6. As set forth in greater detail below, the operative facts and the governing law pertaining to CLECs and their tariffs are substantially similar to those applicable to ILECs and their tariffs. The public interest will be best served if CLECs can continue to utilize wireless termination tariffs unless and until they reach a mutually agreeable negotiated reciprocal compensation agreement.

7. To hold otherwise would mandate that CLECs unwillingly provide the transport and termination of CMRS traffic, with no ability to block such traffic, and no corresponding leverage to force the CMRS providers to negotiate mutually acceptable terms. This regulatory regime would result in "bill and keep" arrangements to be not only the default mechanism, as suggested by MetroPCS, but also the only arrangement. Such an unfair result would be directly contrary to the

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8 Order at para. 15.

terms of 47 C.F.R. § 20.11, which expressly requires the establishment of arrangements that "comply with principles of mutual compensation."

8. The FCC should recognize once and for all that the concept of "bill and keep" is so drastically skewed in favor of the CMRS providers that it cannot be reasonably adjudged equitable, for at least the following reasons:

a) the CLEC pays for more than 50% of the network elements in the call path between a CLEC customer and the CMRS customer;[10]

b) the TELRIC rates of those elements which a CLEC must purchase from the ILEC, at least in Florida, in order to transport and terminate a call originated by a CMRS provider, substantially exceed the rates offered to CMRS providers by BellSouth for elements necessary for the CMRS provider to transport and terminate a call originated by a CLEC;

c) CLECs consistently terminate more CMRS traffic than the reverse; [11] and

d) as the CLEC UNE-P traffic is indistinguishable from ILEC traffic, the CMRS provider has already billed the ILEC for the CLEC UNE-P traffic and recovered its associated costs, for which it would otherwise be receiving double recovery in reciprocal compensation dollars from the CLEC.

III. THE INTEREST OF SUPRA

9. Supra has a substantial, cognizable interest in the Order. Supra is a CLEC which currently provides the transport and termination of wireless traffic to and for numerous CMRS providers.

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9 Order at para. 14 and para. 16.

10 This is true regardless of the direction of the call flow (i.e. originating from or terminating to the CLEC).

11 Note in this regard that when considering the scope of "bill and keep" arrangements in the landline context under 47 U.S.C. § 251(b)(5), the Commission concluded that states arbitrating interconnection agreements could only mandate bill-and-keep in cases where the traffic exchanged between the landline ILEC and landline CLEC would be "roughly balanced." *See* 47 C.F.R. § 51.713(b). Here, there is no evidence that wireless-to-landline traffic is even close to "roughly balanced."

10. CLECs such as Supra plainly incur costs to terminate a CMRS providers' traffic. In this regard, the fact that the traffic originated on a CMRS network has no bearing on the costs Supra incurs to terminate it. It is, in this respect, just like landline-originated traffic. Similarly, it is widely known that CLECs terminate more traffic originated by CMRS providers than vice versa. Additionally, at least as a UNE-P provider, the costs to transport and terminate CMRS providers' traffic is greater than the costs to transport and terminate another CLEC's traffic. This is why CMRS providers such as MetroPCS seek to "default" to a "bill and keep" arrangement as opposed to having to negotiate a cost based reciprocal compensation arrangement: the latter can only result in monies being owed by CMRS providers to CLECs. As CMRS providers have refused, in some cases for years, to enter into reasonable reciprocal compensation arrangements with CLECs, the dollars involved could be substantial. Supra in particular has borne substantial costs in terminating MetroPCS's traffic, for over four years, for which MetroPCS has benefited. Incredibly, MetroPCS had the temerity to claim that Supra is barred by the statute of limitations from seeking certain past due amounts.[12]

11. MetroPCS argues that allowing CLECs to file and enforce wireless termination tariffs "gives them no incentive to enter into negotiations where they would be required to pay reciprocal compensation to CMRS carriers."[13] This is untrue, as CLECs have incentives to negotiate in order to (a) guarantee cost recovery on a monthly basis, (b) determine available mutual cost-saving opportunities with the CMRS provider, (c) reduce litigation costs, and (d) avoid challenges to their respective tariffs.

12. Contrary to MetroPCS' attempt to characterize Supra as seeking to take advantage of

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12 See MetroPCS' First Amended Answer To Plaintiff's Original Complaint, And Counterclaim dated April 25, 2005, a copy of which is attached hereto as **Exhibit A**.

13 Petition at para. 10.

MetroPCS and other CMRS providers by tariffing unduly high rates and refusing to negotiate reasonable rates, Supra has successfully, without resorting to litigation, negotiated mutually agreeable reciprocal compensation agreements with several CMRS providers - even though it has filed a wireless termination tariff.

13. Further discrediting its arguments, MetroPCS is the only remaining CMRS provider originating significant traffic to Supra's network with whom Supra has been unable to obtain a mutually agreeable reciprocal compensation agreement.

14. MetroPCS has requested that the Commission clarify the Order and mandate a bill-and-keep arrangement as the CMRS/CLEC default mechanism[14] - a clarification which would guarantee MetroPCS a free ride on Supra's network – to the tune of over two hundred fifty million (250,000,000) minutes of use (a number which grows daily). Such a clarification would have far-reaching impacts in preventing the ability of any CLEC to recover their already incurred costs of providing the transport and termination of CMRS traffic.

IV. Wireless Termination Tariffs Filed By CLECs Are No Different Than Wireless Termination Tariffs Filed By ILECs

15. In the absence of a negotiated agreement, the only mechanism by which CLECs can hope to recover its costs and obtain compensation for terminating CMRS traffic is via wireless termination tariffs. In the absence of bills issued against a lawfully filed tariff, the CLEC request to negotiate appropriate rates for interconnection will not be taken seriously.

16. The 8th Circuit, in reversing a state commission that had erroneously found that state wireless termination tariffs were preempted, correctly found that CLECs "had no alternative but to pursue tariff options under state law because the wireless companies could not be compelled to

14 Petition at para. 16

negotiate compensation rates under the federal Act."[15]

17. Additionally, and as recognized by at least one state commission, CLECs have no technical ability to stop the flow of the incoming CMRS traffic.[16]

18. As was the case with ILEC wireless termination tariffs, "the existing rules do not explicitly preclude tariffed compensation arrangements."[17]

19. As was the case with ILEC wireless termination tariffs, "the existing compensation rules are silent as to the type of arrangement necessary to trigger payment obligations,"[18] and similarly, it should not be considered unlawful for CLECs to assess transport and termination charges based upon a state tariff.

20. CLECs currently are not afforded the same protections as ILECs, in that CLECs are unable to invoke the procedures of section 252. Until and unless CLECs have this or a similar ability, CMRS providers (like MetroPCS) will continue their efforts to obtain free service from CLECs (like Supra) by hiding behind this Commission and arguing that a bill-and-keep arrangement is not only just and reasonable, but is in fact the default mechanism.

21. In the Supra Action,[19] as referenced by MetroPCS, MetroPCS, in addition to relying on the statute of limitations (as noted above), raised the affirmative defense of waiver to Supra's claim that MetroPCS owes Supra for terminating MetroPCS' traffic:

> Supra has also waived any claim for collection of the charges it seeks to impose because it was on notice that one or more of the Defendants considered their interconnection arrangement to be on a bill-and-keep basis and did not consider itself to be obligated to pay Supra the per minute termination charges that were listed in the

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15 See State of Missouri, et al. v. Public Service Commission of the State of Missouri, WD62961 (8th Cir.)

16 See Qwest Corp. v. East Buchanan Telephone Cooperative, Docket Nos. FCU-04-42 and FCU-04-43, Order Granting Injunctive Relief, at 9 (Iowa Dept. of Util. Bd. Dec. 23, 2004) (where state commission granted injunctive relief preventing LEC from blocking CMRS traffic.)

17 Order at para. 9.

18 Order at para. 10.

19 Supra sued MetroPCS in the United States District Court, Miami Division, to recover its costs for transporting and terminating MetroPCS' traffic since approximately February of 2002.

> Supra tariff. Supra took no steps to block any such Defendants' traffic and continued to accept one or more of the Defendants' traffic with knowledge that such Defendants did not feel obligated to pay the stated per minute charges. Supra had an affirmative obligation to mitigate its damages by declining to continue to accept the traffic and has waived any claim for collection from any Defendant having failed to do so.[20]

MetroPCS raised this defense knowing full well that recent precedent provides that blocking a CRMS providers' traffic is illegal.[21] Furthermore, this argument underscores exactly what MetroPCS seeks – a free ride to terminate as many minutes as it wants on to CLEC networks, under the guise of its claimed regulatory-approved "bill and keep default mechanism."

22. Florida takes the position that all state tariffs, both ILECs and CLECs, are "presumptively valid." MetroPCS argues that, because there are supposedly procedural safeguards for ILEC tariffs that do not exist for CLEC tariffs, the FCC would be justified in distinguishing the treatment of the two. The truth of the matter is that, as with ILEC tariffs, safeguards with respect to CLEC tariffs do exist - any interested party may file a challenge of the tariff with the state public service commission, and ask that such tariff be rendered ineffective immediately.[22] Tellingly, MetroPCS has chosen not to pursue any challenges with respect to Supra's Florida tariff.

23. MetroPCS argues that "there is general parity in terms of the interconnection rights and obligations" between CMRS providers and CLECs because neither one "has the ability to force the other into arbitration."[23] What MetroPCS fails to consider is that UNE-P CLECs, like Supra, have no ability to block the unwanted CMRS provider traffic in the event a mutual reciprocal compensation agreement is not reached. Understandably, BellSouth has told Supra that a.) Supra is not allowed to take any steps in this regard for UNE-P customers, b.) the cost to do such blocking

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20 See pg. 19 of **Exhibit A**.

21 See the Order, at fn 30, citing *Qwest Corp. v East Buchanan Telephone Cooperative*, Docket Nos. FCU-04-42 and FCU-04-43, Order Granting Injunctive Relief, at 9 (Iowa Dept. of Util. Bd. Dec. 23, 2004).

22 See Fla. Stat. Sections 364.01 and 364.03, which require all rates to be "fair, just, reasonable and sufficient..."

would exceed the cost to actually terminate the traffic, and c.) BellSouth was unwilling to accept the legal liability to effect such blocking.

24. MetroPCS also makes the faulty assumption that the costs for CLECs to terminate wireless traffic are equivalent to the costs for CMRS providers to terminate CLEC traffic. It is unclear what MetroPCS relies upon in arriving at this conclusion. Although this assumption may be true in some cases, it is certainly not true in all cases.[24]

25. According to MetroPCS, there is no need for, nor would there be any, consequences to CMRS providers (like MetroPCS) that choose not to negotiate reasonable rates and terms, thereby forcing bill-and-keep arrangements down the throats of CLECs.

26. MetroPCS then argues that this is appropriate because CLECs "can file complaints at the FCC under Section 208."[25] However, this is no different than the remedy ILECs previously had (as acknowledged by MetroPCS in footnote 30 of the Petition) and which the Commission dismissed in expressly ordering that ILECs now have the ability to invoke the negotiation and arbitration processes of Section 252.

27. The Petition sets forth no valid reason why CLECs should not enjoy a similar right. For good reason, as there is simply no harm to CMRS providers should CLECs be afforded such.

28. Lastly, MetroPCS either intentionally or inadvertently misquotes the Commission in an attempt to conjure up a distinction between the interconnection situation presented by CLECs and ILECs in order to justify different treatment. MetroPCS states that "prior to the 1996 Act, the

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23 Petition at p. 11, para. 13

24 MetroPCS claims that the FCC ruled that costs for terminating wireless traffic should fall somewhere between 0.2 and 0.4 cents per minute. Of course, the true costs for terminating such are set by the various state commissions in setting TELRIC rates for the network elements necessary to terminate any calls. It should be noted that the CRMS providers, like MetroPCS, are not bound by the TELRIC rates, and, in most cases, can terminate traffic at much lower rates than TELRIC. Notwithstanding such, MetroPCS has failed to state that it would even be willing to pay between 0.2 and 0.4 cents per minute to a CLEC for terminating such traffic, even though, presumably, MetroPCS would not dispute the reasonableness of such.

Commission had **ruled** that 'tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection.'"[26]

29. In reality, the Commission did not rule that tariffs be filed only after negotiations, but rather expressed, in dicta, an expectation of such. The Commission expressly stated that it "will not herein address issues such as whether a certain tariff filing constitutes a breach of good faith. However, we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection. We also expect the agreements to be concluded without delay."[27] Supra notes that it requested negotiations for a mutual reciprocal compensation agreement with MetroPCS as early as October 2002. Supra again notes that MetroPCS has raised a statute of limitations defense in an effort to prevent Supra from recovering costs which Supra has already incurred – thereby providing MetroPCS with great incentives to delay meaningful negotiations for as long as possible, allowing them to continue to raise the statute of limitations defense as each month goes by.

V. CMRS Carriers Are Likely Already Receiving Their Reciprocal Compensation

30. It is no surprise that MetroPCS requests a default arrangement of bill-and-keep, as CMRS providers, like MetroPCS, are likely already recovering their portion of reciprocal compensation from the ILEC.

31. In the Supra Action, MetroPCS admitted that it has entered into an interconnection agreement with BellSouth, and that pursuant to such interconnection agreement, BellSouth has made payments to MetroPCS "for local (intraMTA) calls that appeared to have originated on the BellSouth network and terminated on" MetroPCS' network. However MetroPCS was "unable to either admit

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25 Petition at p. 12, para. 13

26 Petition at p. 13, para. 15 (Emphasis added).

27 The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Service, Report

or deny whether any of the local (intraMTA) calls that appeared to have originated on the BellSouth network and which were terminated on MetroCPS California/Florida, Inc.'s network were actually Supra UNE-P traffic."[28]

32. Despite these statements, MetroPCS did admit that "Supra's traffic cannot be distinguished from other LEC traffic, such as BellSouth traffic, which is being terminated on MetroPCS California/Florida, Inc.'s network in the State of Florida unless Supra provides the ten-digit telephone numbers assigned to its customers and the time periods for which such numbers have been assigned to Supra's customers."[29]

33. As such, it is clear that MetroPCS cannot distinguish Supra UNE-P traffic from the LEC traffic and is likely already recovering its costs of terminating Supra's traffic from the LEC.

VI. The Order Was Not Intended To Impair Or Preclude Any CLEC Rights

34. As recognized by the Commission, "the Commission **specifically declined to preempt state regulation of LEC intrastate interconnection rates applicable to CMRS providers** and it acknowledged that the intrastate portions of interconnection arrangements are sometimes filed in state tariffs."[30] (Emphasis added). Notably the Commission did not distinguish between ILECs and CLECs.

35. The Commission further stated, "[t]hus, it appears that the Commission was aware of these arrangements and explicitly declined to preempt them at that time."[31] Thus the current state of the law, as recognized by the Commission and until amended by the Order, was that LECs, both

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No. CL-379, Declaratory Ruling, 2 *FCC Rcd 2910, 2916*, para. 56 (1987).

28 See excerpt of Defendants' Response to Plaintiff's First Request for Admissions dated May 10, 2005, RFA 129 (attached hereto as **Exhibit B**).

29 See excerpt of the Response to Plaintiff's First Request for Production of Documents by Supra to Defendants dated May 10, 2005, RFP 24 (attached hereto as **Exhibit C**).

30 Order at para. 10.

31 Id.

ILECs and CLECs, may use state tariffs for enforcing wireless termination charges.

36. The T-Mobile Petition was aimed specifically at the wireless termination tariffs of ILECs. Nothing in the Order should therefore be deemed as a limitation on the already limited ability of CLECs to obtain reciprocal compensation from CMRS providers.

VII. CONCLUSION

The FCC should follow through on its original intent and create rules which permit carriers to recover their reasonable costs to transport and terminate another carriers' traffic, irrespective of the origination of such traffic. Conversely, the FCC should not permit CMRS providers such as MetroPCS to receive services for free or reward such providers for their continued delay and refusal to enter reciprocal compensation agreements. To effectuate these goals, Supra requests that the FCC clarify its order to specifically state that: (1) like ILECs, CLECs are allowed to rely upon and enforce reasonable rates contained in state-filed tariffs, on a backward-looking basis; and (2) that CLECs can either continue to rely on such tariffs on a going-forward basis or may, like ILECs, invoke similar procedures to those of section 252.

Respectfully submitted this 14th day of July 2005.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 05-20291 CIVIL (KING/O'SULLIVAN)

SUPRA TELECOMMUNICATIONS, AND INFORMATION SYSTEMS, INC.,	§
	§
Plaintiff,	§
v.	§
	§
METROPCS, INC., METROPCS WIRELESS, INC. and METROPCS CALIFORNIA/FLORIDA, INC.	§
	§
	§
Defendants.	

DEFENDANTS' FIRST AMENDED ANSWER TO PLAINTIFF'S ORIGINAL COMPLAINT, AND COUNTERCLAIM

TO THE HONORABLE COURT:

Defendants MetroPCS, Inc., MetroPCS Wireless, Inc., and MetroPCS California/Florida, Inc. (collectively "Defendants") hereby answer the original Complaint of Plaintiff Supra Telecommunications and Information Systems, Inc. ("Plaintiff" or "Supra"), and file the Counterclaim set forth below, as follows:

ANSWER

1. Defendants MetroPCS and MetroPCS Wireless, Inc. deny the allegations in paragraph 1 of the Complaint, and assert the defense of lack of jurisdiction over the person, pursuant to Fed. R. Civ. P. 12 (b) (2). The allegation contained in the first sentence in paragraph 1 of the Complaint is a legal conclusion which Defendants are not required to admit or deny. MetroPCS California/Florida, Inc. admits that it transacts and conducts business in this judicial district.

2. The allegations contained in paragraph 2 of the Complaint are legal conclusions which Defendants are not required to either admit or deny.

3. The allegations contained in paragraph 3 of the Complaint are legal conclusions which Defendants are not required to either admit or deny.

4. The allegations contained in paragraph 4 of the Complaint are legal conclusions which Defendants are not required to either admit or deny.

5. Defendants deny the allegations in paragraph 5 of the Complaint. Defendants incorporate by reference the allegations in paragraphs 12-16, 18, 25, 32-34, 38, 39, 49, 55, 56, 58-60, 63, 65 and 66 of the Answer; and paragraphs 1-15 in the Counterclaim, set forth below.

6. Defendants are without sufficient information to either admit or deny the allegations in paragraph 6 of the Complaint.

7. With respect to the allegations in paragraph 7 of the Complaint, Defendants deny that the collective "MetroPCS" (as defined in the introductory paragraph of the Complaint) is a "corporation." Defendants admit that MetroPCS, Inc., MetroPCS Wireless, Inc. and MetroPCS California/Florida, Inc. are each corporations incorporated under the laws of the State of Delaware, with their principal place of business in Dallas, Texas.

8. With respect to the allegations in paragraph 8 of the Complaint, Defendants admit that Supra provides certain telecommunications services in the State of Florida. Defendants otherwise are without sufficient information to either admit or deny the remaining allegations in paragraph 8 of the Complaint. Defendants deny that the transport and termination of wireless-originated traffic is a competitive access service properly subject to the Plaintiff's Competitive Access Provider Services Tariff for the State of Florida because Supra has a termination monopoly over the delivery of traffic to its customers.

9. The allegation contained in paragraph 9 of the Complaint is a legal conclusion which Defendants are not required to either admit or deny.

10. The allegations contained in paragraph 10 of the Complaint are legal conclusions which Defendants are not required to either admit or deny. Defendants deny that the filed rate doctrine permits Plaintiffs to collect the sums sought in this case, and denies that the rates sought by Supra are lawfully approved, reasonable, or comport with applicable law.

11. With respect to the allegations in paragraph 11 of the Complaint, Defendants admit that Section 5.3.9 of the document attached as Exhibit A to the Complaint, which purports to be effective June 30, 2004, states: "Rates for termination of IntraMTA Traffic (per MOU) for CMRS providers and of Local Wireline Traffic (per MOU) for LECS: $0.01800 (D)." Defendants deny that said Exhibit A is valid, enforceable or applicable to Defendants or to any services provided by Supra to Defendants. Defendants otherwise deny the allegations in paragraph 11 of the Complaint.

12. With respect to the allegations in paragraph 12 of the Complaint, Defendants deny that there is any direct physical interconnection between the network of Supra and any network of Defendants. Defendants admit that the network of MetroPCS California/Florida, Inc. may on occasion be indirectly interconnected to Supra's network through the facilities of other connecting carriers in a manner that permits calls originated on that Defendants' network to terminate on Supra's network (as well as permitting calls that originate on Supra's network to terminate on that Defendants' network). Defendants otherwise deny the allegations in paragraph 12 of the Complaint.

13. With respect to the allegations in paragraph 13 of the Complaint, Defendants admit that Defendant MetroPCS California/Florida, Inc.'s network and Supra's network may on occasion be indirectly interconnected through the facilities of other connecting carriers such that calls originating on each party's network can terminate on the other party's network. Defendants

are without sufficient information at this time to admit or deny whether this occurred "as early as January 2002." Defendants deny that the termination services rendered by Supra are any more "valuable" than the reciprocal termination services that MetroPCS California/Florida Inc. render to Supra and Supra's customers. Defendants otherwise deny the allegations in paragraph 13 of the Complaint.

14. With respect to the allegations in paragraph 14 of the Complaint, Defendants admit that MetroPCS California/Florida, Inc. and Supra have discussed and exchanged drafts of a possible reciprocal compensation agreement. Defendants deny that Supra has negotiated in good faith to enter into a reciprocal compensation arrangement with MetroPCS California/Florida Inc. Defendants deny that Supra's proposed rates, terms and conditions are reasonable within the industry. Defendants otherwise deny the allegations in paragraph 14 of the Complaint.

15. With respect to the allegations in paragraph 15 of the Complaint, Defendants deny any refusal to enter into a reasonable reciprocal compensation agreement with Supra. Rather, it is Supra that has declined to negotiate in good faith and failed to enter into a reasonable reciprocal compensation agreement. Defendants note that the proper party to any such agreement would be MetroPCS California/Florida, Inc., as opposed to one of the other Defendants. Defendants deny that the termination services rendered by Supra are any more "valuable" than the reciprocal termination services that MetroPCS California/Florida Inc. render to Supra and Supra's customers. Defendants deny that there is currently any obligation to make payment to Supra, and otherwise deny the allegations in paragraph 15 of the Complaint.

16. With respect to the allegations in paragraph 16 of the Complaint, Defendants admit that the networks of MetroPCS California/Florida, Inc. and Supra may on occasion be indirectly interconnected through the facilities of other connecting carriers to Supra's network, in a manner

that permits calls originated on each parties' network to terminate on the other party's network . Defendants deny that the transport and termination of wireless-originated traffic is a competitive access service properly subject to the Plaintiff's Competitive Access Provider Tariff for the State of Florida because Supra has a termination monopoly over the delivery of traffic to its customers. Defendants also deny that Supra's tariffs are lawfully filed or approved, reasonable, or comport with applicable law. Defendants otherwise deny the allegations in paragraph 16 of the Complaint.

17. With respect to the allegations in paragraph 17 of the Complaint, Defendants admit that Supra has submitted some invoices, which have been objected to. Defendants are without sufficient information to admit or deny whether the invoices properly reflect any services actually rendered by Supra to MetroPCS. Defendants otherwise deny the allegations in paragraph 17 of the Complaint.

18. With respect to the allegations in paragraph 18 of the Complaint, Defendants admit that the network of MetroPCS California/Florida, Inc. may on occasion be indirectly interconnected to Supra's network in a manner that permits calls originated on that Defendants' network to terminate on Supra's network (as well as permitting calls that originate on Supra's network to terminate on that Defendants' network). Defendants deny the allegation of paragraph 18 to the extent that the use of the term "accept" implies an ability and legal right to block traffic destined to the Supra network, or that Defendants have any obligation to pay Supra. Defendants otherwise deny the allegations in paragraph 18 of the Complaint.

19. Defendants deny the allegations in paragraph 19 of the Complaint.

20. Paragraph 20 of the Complaint states a legal conclusion insofar as it pertains to actions "required by law" which Defendants are not required to admit or deny. To the extent that

Paragraph 20 contains factual allegations, Defendants deny the allegations in paragraph 20 of the Complaint.

21. Defendants deny the allegations in paragraph 21 of the Complaint with the qualification that Defendants do not understand what Supra means by the term "formal disputes".

22. The allegations in paragraph 22 of the Complaint that MetroPCS "accepted" Supra services and has not asserted rights under the Communications Act of 1934, as amended, (the "Telecom Act") Telecom Act to reject services, state legal conclusions that Defendants are not required to admit or deny. Defendants admit that Defendants' and Supra's networks continue on occasion to be indirectly interconnected through the facilities of connecting carriers. Defendants otherwise deny the allegations in paragraph 22 of the Complaint.

23. Defendants deny the allegations in paragraph 23 of the Complaint.

24. Defendants deny the allegations in paragraph 24 of the Complaint.

25. With respect to the allegations in paragraph 25 of the Complaint, Defendants admit that they have not made monetary payments to Supra, but deny any obligation to make such monetary payments. Defendant MetroPCS California/Florida, Inc. has terminated calls on its network which originated on Supra's network. The reciprocal calls terminated on the networks of Supra and MetroPCS California/Florida, Inc. were on a bill-and-keep basis or, alternatively, the amounts due to MetroPCS California/Florida, Inc. from Supra offset any claim by Supra in whole or part. Defendants otherwise deny the allegations in paragraph 25 of the Complaint.

26. Defendants deny the allegations in paragraph 26 of the Complaint.

27. With respect to the allegations in paragraph 27 of the Complaint, Defendants admit that the total amounts stated on various invoices from Supra exceed the amount of three million six hundred thousand dollars ($3,600,000), but deny the accuracy or validity of the invoices, and

deny any obligation to make payment pursuant to such invoices. Defendants otherwise deny the allegations in paragraph 27 of the Complaint.

28. Defendants deny the allegations in paragraph 28 of the Complaint.

29. To the extent that Paragraph 29 of the Complaint states the legal conclusion that the Supra tariff was "validly filed", and that Defendants are "required to pay", Defendants are not required to admit or deny the allegations. Defendants deny that Supra's tariff has been "approved' by the Florida Public Service Commission. Defendants otherwise deny the allegations in paragraph 29 of the Complaint.

30. With respect to the allegations in paragraph 30 of the Complaint, Defendants admit that Section 5.3.9 of the document attached as Exhibit A to the Complaint, which purports to be effective June 30, 2004, states: "Rates for termination of IntraMTA Traffic (per MOU) for CMRS providers and of Local Wireline Traffic (per MOU) for LECS: $0.01800 (D)." Defendants deny that said Exhibit A is valid, enforceable, reasonable, or applicable to Defendants or to any services provided by Supra to Defendants. Defendants otherwise deny the allegations in paragraph 30 of the Complaint.

31. Paragraph 31 states a legal conclusion insofar as it pertains to "action required under the law" which Defendants are not required to admit or deny. To the extent that paragraph 31 contains factual allegations, Defendants deny the allegations in paragraph 31 of the Complaint.

32. With respect to the allegations in paragraph 32 of the Complaint, Defendants admit that Defendant MetroPCS California/Florida, Inc.'s network and Supra's network may on occasion be indirectly interconnected through the facilities of other connection carriers such that calls originating on each party's network can terminate on such network. Defendants otherwise deny the allegations in paragraph 32 of the Complaint.

33. With respect to the allegations in paragraph 33 of the Complaint, Defendants admit that Defendant MetroPCS California/Florida, Inc.'s network and Supra's network may on occasion be indirectly interconnected through the facilities of other connection carriers such that calls originating on each party's network can terminate on the other party's network. Defendants are without sufficient knowledge at this time to know when Supra commenced terminating wireless calls on its network originated by MetroPCS California/Florida, Inc. customers, or that, in fact, such calls are being terminated on Supra's network. Defendants otherwise deny the allegations in paragraph 33 of the Complaint.

34. With respect to the allegations in paragraph 34 of the Complaint, Defendants admit that they have not made monetary payments to Supra, but deny any obligation to make such monetary payments. Defendant MetroPCS California/Florida, Inc. has on occasion indirectly terminated calls on its network which originated on Supra's network. The reciprocal calls terminated on the networks of Supra and MetroPCS California/Florida, Inc. were on a bill-and-keep basis or, alternatively, the amounts due to MetroPCS California/Florida, Inc. from Supra offset any claim by Supra in whole or part. Defendants otherwise deny the allegations in paragraph 34 of the Complaint.

35. Defendants deny the allegations in paragraph 35 of the Complaint.

36. The allegations contained in paragraph 36 of the Complaint are legal conclusions which Defendants are not required to either admit or deny.

37. The allegations contained in paragraph 37 of the Complaint are legal conclusions which Defendants are not required to either admit or deny. However, Defendants acknowledge that 47 U.S.C. § 201 contains, *inter alia*, substantially the language quoted.

38. With respect to paragraph 38 of the Complaint, Defendants deny that the transport and termination of wireless-originated traffic is a competitive access service properly subject to the Plaintiff's Competitive Access Provider Services Tariff for the State of Florida because Supra has a termination monopoly over the delivery of traffic to its customers, and otherwise deny the allegations in paragraph 38 of the Complaint.

39. With respect to the allegations in paragraph 39 of the Complaint, Defendants admit that they have not made monetary payments to Supra, but deny any obligation to make such monetary payments. Defendant MetroPCS California/Florida, Inc. has on occasion indirectly terminated calls on its network which originated on Supra's network. The reciprocal calls terminated on the networks of Supra and MetroPCS California/Florida, Inc. were on a bill-and-keep basis or, alternatively, the amounts due to MetroPCS California/Florida, Inc. from Supra offset any claim by Supra in whole or part. Defendants otherwise deny the allegations in paragraph 39 of the Complaint.

40. Paragraph 40 of the Complaint states a legal conclusion pertaining to a legal presumption which Defendants are not required to admit or deny. To the extent that paragraph 40 contains factual allegations, Defendants deny the allegations in paragraph 40 of the Complaint.

41. With respect to the allegations in paragraph 41 of the Complaint, Defendant MetroPCS California/Florida, Inc. admits that it has made payments to other telecommunications carriers pursuant to reciprocal compensation agreements but denies any implication that those carriers were similarly situated to Supra. Defendants otherwise deny the allegations in paragraph 41 of the Complaint.

42. Defendant MetroPCS California/Florida, Inc. admits that it has entered into certain reciprocal compensation agreements with other telecommunications carriers, which include, *inter alia*, transport and termination of calls originating on a wireless network, but denies any implication that those carriers were similarly situated to Supra, or that such agreements create any obligation to pay Supra. Defendants otherwise deny the allegations of paragraph 42 of the Complaint.

43. Defendants deny the allegations in paragraph 43 of the Complaint.

44. The allegation in paragraph 44 of the Complaint states a legal conclusion concerning the requirements of Section 201 of the Telecom Act which Defendants are not required to admit or deny. With respect to the factual allegations in paragraph 44 of the Complaint, Defendants deny any refusal to enter into a reasonable reciprocal compensation agreement with Supra. Rather, it is Supra that has declined to negotiate in good faith and failed to enter into a reasonable reciprocal compensation agreement. Defendants note that the proper party to any such agreement would be MetroPCS California/Florida, Inc., as opposed to one of the other Defendants. Defendants deny that there is currently any obligation to make payment to Supra, and otherwise deny the allegations in paragraph 44 of the Complaint.

45. Defendants deny the allegations in paragraph 45 of the Complaint.

46. The allegation in paragraph 46 of the Complaint is a legal conclusion, which Defendants are not required to either admit or deny. To the extent paragraph 46 contains any factual allegation, it is denied.

47. With respect to the allegations in paragraph 47 of the Complaint, Defendants admit that Supra has submitted some invoices, which have been objected to. Defendants do not have sufficient information at this time to confirm or deny whether the rendered invoices properly

correlate to any services provided by Supra to MetroPCS during the stated time period. Defendants otherwise deny the allegations in paragraph 47 of the Complaint.

48. Defendants deny the allegations in paragraph 48 of the Complaint.

49. With respect to the allegations in paragraph 49 of the Complaint, Defendants admit that Supra has submitted some invoices, which have been disputed. Defendants otherwise deny the allegations in paragraph 49 of the Complaint.

50. Defendants deny the allegations in paragraph 50 of the Complaint.

51. With respect to the allegations in paragraph 51 of the Complaint, Defendants admit that Plaintiff is asserting such a claim, but deny the validity of the claim asserted. Defendants otherwise deny the allegations in paragraph 51 of the Complaint.

52. The allegations contained in paragraph 52 of the Complaint are legal conclusions which Defendants are not required to either admit or deny. However, Defendants acknowledge that 47 U.S.C. § 206 (not § 207) contains, *inter alia*, substantially the language quoted.

53. The allegation in paragraph 53 of the Complaint states a legal conclusion with regard to the requirements of Sections 201 of the Telecom Act which Defendants are not required to admit or deny. Defendant MetroPCS California/Florida Inc. admits that it is a common carrier within the meaning of the Telecom Act. Defendants otherwise deny the allegations in paragraph 53 of the Complaint.

54. The allegations in paragraph 54 of the Complaint state a legal conclusion that Supra is entitled to recoup attorneys fees and costs as a result of a violation which Defendants are not required to admit or to deny. Defendants do not possess information at this time to enable it to admit or deny whether Supra has incurred attorney's fees and costs to bring this action.

55. The allegations contained in paragraph 55 of the Complaint are legal conclusions which Defendants are not required to either admit or deny. However, Defendants acknowledge that 47 U.S.C. § 251(b)(5) contains, *inter alia*, the language quoted. Defendants deny that they are local exchange carriers within the meaning of this statute.

56. The allegations contained in paragraph 56 of the Complaint are legal conclusions which Defendants are not required to either admit or deny. However, Defendants acknowledge that 47 C.F.R. § 51.703 contains, *inter alia*, the language quoted. Defendants deny that they are local exchange carriers within the meaning of this statute.

57. The allegations contained in paragraph 57 of the Complaint are legal conclusions which Defendants are not required to either admit or deny. However, Defendants acknowledge that 47 C.F.R. § 57.701(d) contains, *inter alia*, the language quoted.

58. With respect to the allegations in paragraph 58 of the Complaint, Defendants admit that Defendant MetroPCS California/Florida, Inc.'s network and Supra's network may on occasion be indirectly interconnected through the facilities of other connecting carriers such that calls originating on each party's network can terminate on the other party's network. Defendants do not possess sufficient information at this time to ascertain when Supra first began terminating MetroPCS traffic, if at all. Defendants otherwise deny the allegations in paragraph 58 of the Complaint.

59. With respect to the allegations in paragraph 59 of the Complaint, Defendants deny any refusal to enter into a reasonable reciprocal compensation agreement with Supra. Rather, it is Supra that has declined to negotiate in good faith and failed to enter into a reasonable reciprocal compensation agreement. Defendants note that the proper party to any such agreement would be MetroPCS California/Florida, Inc., as opposed to one of the other

Defendants. Defendants deny that the termination services rendered by Supra are any more "valuable" than the reciprocal termination services that MetroPCS California/Florida Inc. render to Supra and Supra's customers. Defendants deny that there is currently any obligation to make payment to Supra, and otherwise deny the allegations in paragraph 59 of the Complaint.

60. With respect to the allegations in paragraph 60 of the Complaint, Defendants admit that MetroPCS California/Florida, Inc. and Supra have not entered into a written reciprocal compensation agreement, and allege that such failure is due to Supra's refusal to negotiate in good faith and to agree to just and reasonable terms. Defendants otherwise deny the allegations in paragraph 60 of the Complaint.

61. The allegation in paragraph 61 of the Complaint states legal conclusions with regard to proximate causation and the requirement of Section 251(b) of the Telecom Act which Defendants are not obligated to admit or deny. Defendants deny the factual allegations in paragraph 61 of the Complaint.

62. MetroPCS California/Florida, Inc. denies the allegation in paragraph 62 of the Complaint to the extent that it implies that there has been a knowing non-reciprocal conferral of benefits, or that MetroPCS California/Florida, Inc. has any legal obligation. MetroPCS California/Florida, Inc. and Supra have conferred reciprocal benefits upon one another through the termination of each other's traffic. Defendants otherwise deny the allegations in paragraph 62 of the Complaint.

63. Defendants deny the allegations in paragraph 63 of the Complaint to the extent that it implies an ability, legal right, or obligation to block traffic from subscribers destined to the Supra network. Defendants deny the allegation in paragraph 63 of the Complaint to the extent that it implies that there has been a non-reciprocal retention of benefits; MetroPCS California/Florida,

Inc. and Supra have conferred reciprocal benefits upon one another through the termination of each other's traffic. Defendants otherwise deny the allegations in paragraph 63 of the Complaint.

64. Defendants deny the allegations in paragraph 64 of the Complaint.

65. With respect to the allegations in paragraph 65 of the Complaint, Defendants admit that Defendant MetroPCS California/Florida, Inc.'s network and Supra's network are on occasion indirectly interconnected through the facilities of other connecting carriers such that calls originating on each party's network can terminate on the other party's network. Defendants are without sufficient knowledge at this time to know when Supra commenced terminating wireless calls originated by MetroPCS customers. Defendants deny that the charges Supra is seeking to collect reflect the reasonable value of any services rendered to Defendants. Defendants otherwise deny the allegations in paragraph 65 of the Complaint.

66. Defendants deny the allegation in paragraph 66 of the Complaint to the extent that it implies that there has been a non-reciprocal retention of benefits; MetroPCS California/Florida, Inc. and Supra have conferred reciprocal benefits upon one another through the termination of each other's traffic. With respect to the allegations in paragraph 66 of the Complaint, Defendants admit that they have not made monetary payments to Supra, but deny any obligation to make such monetary payment. Defendant MetroPCS California/Florida, Inc. has on occasion indirectly terminated calls on its network which originated on Supra's network. The reciprocal calls terminated on the networks of Supra and MetroPCS California/Florida, Inc. were on a bill and keep basis or, alternatively, the amounts due to MetroPCS California/Florida, Inc. from Supra offset any claim by Supra in whole or part. Defendants otherwise deny the allegations in paragraph 66 of the Complaint.

67. Defendants deny the allegations in paragraph 67 of the Complaint.

68. Defendants deny the allegations in paragraph 68 of the Complaint.

69. Defendants deny all other allegations contained in the Complaint.

70. Defendants deny that Supra is entitled to any relief prayed for.

AFFIRMATIVE DEFENSES

1. Defendants assert the defense of illegality. Pursuant to 47 U.S.C § 202(b), all charges, practices, classifications and regulations for and in connection with the common carrier services provided by Supra to any Defendant must be just and reasonable, and no Defendant can be subject to any unreasonable discrimination or preferences. In the specific context of the services at issue here, the Supra charges must be reciprocal and symmetrical, meaning that Supra must agree to pay Defendants the same rate when Defendants terminate traffic originated by Supra as Supra charges when Defendants' traffic terminates on the Supra network. See 47 C.F.R. § 20.11(b) ("local exchange carriers and commercial mobile radio service providers shall comply with the principle of mutual compensation".); 47 C.F.R. § 51.703(a) ("Each LEC shall establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic with any requesting carrier"). The unilateral imposition by Supra of non-reciprocal, non-symmetrical rate is not just and reasonable and is, therefore, unlawful.

2. The charges that Supra seeks to impose also are unlawful because they are not reasonably related to Supra's cost of providing the termination service. Supra is a non-facility based competitive local exchange carrier ("CLEC"). Rather than owning and operating its own network, Supra secures services and facilities from other carriers and uses these to terminate traffic to the Supra customers. Specifically, Supra is a UNE-P carrier meaning that it purchases the unbundled network elements platform from BellSouth. During the time frame relevant to this

dispute, Supra was purchasing this unbundled network elements platform from BellSouth at favorable TELRIC (total elemental long run incremental cost) prices. On information and belief, the rates paid by Supra to Bell South are a small fraction of the charges being imposed by BellSouth on Supra. As a consequence, the Supra charges are unreasonable and unlawful.

3. The charges that Supra seeks to impose on Defendants also are unlawful because Supra has entered into special preferential contractual arrangements with other carriers resulting in their being charged a different and lesser rate. Supra also has discriminated against Defendants by seeking to collect termination charges from Defendants while failing to collect from other wireless carriers which terminate traffic to Supra. The Telecom Act prevents telecommunications carriers from subjecting others to unreasonable discrimination and preferences. 47 U.S.C § 202. In addition, Section 5.1 of the tariff that Supra is seeking to enforce entitles Defendants to get the same rates offered by Supra by contract to other similarly situated carriers. The effort of Supra to charge Defendants a higher rate is unlawful.

4. To the extent that Supra has sought to establish wireless termination rates that are at variance from the requirements of the Telecom Act and the implementing regulations of the FCC, it is preempted by Federal law from doing so. The Constitution provides that the laws of the United States are the supreme law of the land, and the Supreme Court has declared that federal regulations have no less preemptive effect than federal statutes. And, the Supreme Court has upheld explicitly the adoption of national rules governing interconnection and has recognized the authority of the FCC to regulate interconnection involving wireless carriers. Under these circumstances, the effort of Supra to enforce unilaterally imposed wireless termination rates that have been filed locally -- but have received no state regulatory scrutiny or approval -- is unlawful.

5. The "filed rate doctrine" which Supra seeks to invoke does not permit a carrier to charge a rate that is unlawful. Moreover, the filed rate doctrine only applies to duly filed and approved tariffs which is not the case here. The state of Florida effectively has deregulated CLEC tariffs and such tariffs are accepted as filed, not "approved". However, the filed rate doctrine, if deemed applicable, would prohibit Supra from collecting a charge at variance from the filed charge. As a consequence, the effort of Supra to collect from Defendants would be barred as unlawful to the extent that the rate Supra is seeking to collect under this theory is at variance from its filed rate.

6. As a local exchange carrier, Supra has a statutory duty to establish reciprocal and symmetrical compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251 (b)(5); 47 C.F.R. §§ 51.703(a); 51.711(a). Supra has, however, declined to negotiate in good faith with any Defendants to reach an interconnection agreement that provides for reasonable and reciprocal rates. Having failed to meet its statutory obligations, Supra is precluded from recovery.

7. Defendants further assert the defense of payment. A "bill-and-keep" interconnection arrangement is one in which neither interconnecting carrier charges the other for termination of traffic that originates on the other carrier's network. *See* 47 C.F.R. § 51.713(a) . Where, as here, two carriers are indirectly interconnected and they have not mutually agreed upon the terms of an interconnection agreement, the parties are deemed to be party to such a "bill-and-keep" interconnection arrangement. Thus, Supra has received consideration from one or more of the Defendants in the form of the reciprocal termination by one or more of the Defendants of traffic originated on the Supra system, and no further payment is due.

8. Even if this was not treated as a bill-and-keep arrangement and Supra and any Defendant were deemed to be obligated to make payments to one another for terminating each other's traffic, such Defendant is entitled to a payment credit based on the traffic originated by Supra customers that any Defendant has terminated. As noted above, the law requires termination rates between a LEC and a CMRS carrier to be symmetrical and reciprocal meaning that one or more of the Defendants are, at the very least, entitled to payment credits for terminating traffic at the same per minute rate that Supra is seeking to impose on Defendants. Because Defendants offer wireless customers unlimited local service for a flat monthly feet, the Defendants' wireless service has become a complete substitute for traditional landline telephone service for many customers. And, because the Defendants' customers pay the same monthly amount regardless of the number of wireless calls they place or receive, they have no financial incentive to discourage others from calling their wireless phone. The result is a balance of incoming and outgoing calls. As a consequence, the exchange of traffic between any Defendant and Supra has been roughly equivalent with the effect that any obligation of Defendants to Supra has been largely if not completely offset by the reciprocal obligation of Supra to one or more of the Defendants.

9. Defendants assert the defense of waiver. As a local exchange carrier, Supra has a statutory duty to establish reciprocal and symmetrical compensation arrangements for the transport and termination of telecommunications. 47 U.S.C. § 251 (b)(5); 47 C.F.R. §§ 51.703(a); 51.711(a). Having failed to abide by the statutory principles of reciprocity and symmetry, Supra has waived its right to charge the termination rates it is seeking to impose.

10. Pursuant to 47 U.S.C § 201 (a) and 47 C.F.R § 51.100, Supra is required to provide interconnection services and termination services upon reasonable request. In this

instance, Defendants have reasonably requested that Supra provide interconnection services pursuant to a reciprocal compensation arrangement. Supra has refused to agree to just and reasonable terms, in violation of 47 U.S.C. § 201 and § 251(b)(5), and as a consequence should be deemed to have waived any right to collect unilaterally imposed wireless termination charges from Defendants.

11. Supra has also waived any claim for collection of the charges it seeks to impose because it was on notice that one or more of the Defendants considered their interconnection arrangement to be on a bill-and-keep basis and did not consider itself to be obligated to pay Supra the per minute termination charges that were listed in the Supra tariff. Supra took no steps to block any such Defendants' traffic and continued to accept one or more of the Defendants' traffic with knowledge that such Defendants did not feel obligated to pay the stated per minute charges. Supra had an affirmative obligation to mitigate its damages by declining to continue to accept the traffic and has waived any claim for collection from any Defendant having failed to do so.

12. Defendant raise the defense of estoppel. Decisions of the FCC establish that the Commission intended for carriers to negotiate voluntary interconnection agreements and that tariffs would be filed only after the negotiation process had been completed, *See, e.g., The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services,* 2 FCC Rcd. 2910, 2916, para 56 (1987) ("we expect that tariffs reflecting charges to cellular carriers will be filed only after the co-carriers have negotiated agreements on interconnection") Supra has, however, declined to negotiate in good faith with one or more of the Defendants to reach an interconnection agreement that provides for reasonable and reciprocal rates. Supra's failure arises in part through its failure to respond for lengthy periods of time to reasonable

interconnection proposals made by one or more of the Defendants. Supra should be deemed estopped from unilaterally imposing wireless termination charges by tariff under these circumstances.

13. Supra also is estopped by the filed rate doctrine, if applicable, from seeking to collect any charges from Defendants at variance from the rate it has on file. And, if the filed rate is unlawful, as is the case here, the estoppel imposed by the filed rate doctrine would work to deny Supra any recovery.

14. Supra also is estopped from collecting the charges it seeks to impose because it was on notice that one or more of the Defendants considered their interconnection arrangement to be on a bill-and-keep basis and did not consider itself to be obligated to pay Supra the per minute termination charges that were listed in the Supra tariff. Supra took no steps to block any Defendant's traffic and continued to accept such Defendant's traffic with knowledge such Defendants did not feel obligated to pay the stated per minute charges. Supra had an affirmative obligation to mitigate its damages by declining to continue to accept the traffic and is estopped from collecting from any Defendant having failed to do so.

15. Defendants assert the defense of limitations. Supra avers in its complaint that it commenced providing termination services to Defendants as early as January 2002 (Complaint, p. 13) and that Defendants have failed to pay anything to Supra for the services rendered. Although the first "invoice" referenced on Exhibit B to Plaintiff's Complaint is dated April 27, 2003, on information and belief, Supra contends that such "invoice" purports to include a period beginning in February 2002. The Telecom Act provides that "All actions at law by carriers for recovery of their lawful charges, or any part thereof, shall be begun within two years from the time that the cause of action accrues, and not after". 47 U.S.C. § 415(b). By its own admission,

the Supra claim accrued more than two years prior to the filing of the Complaint in February of 2005 and thus is barred by the applicable statute of limitations.

16. Defendants assert the defense of laches. Supra failed to respond for extended periods of time to Defendants' efforts to implement a reasonable reciprocal compensation arrangement containing rates based upon forward looking costs. The FCC rules require a LEC such as Supra to satisfy a reasonable interconnection request "within a reasonable time after the request is made". 47 C.F.R. § 20.11(a). Having failed to comply with this regulation, Supra should be deemed barred by the doctrine of laches from seeking to enforce its unilaterally filed non-symmetrical wireless terminatioin tariff.

17. Supra also is barred by laches from collecting the charges it seeks to impose because it was on notice that one or more of the Defendants considered their interconnection arrangement to be on a bill-and-keep basis and did not consider itself to be obligated to pay Supra the per minute termination charges that were listed in the Supra tariff. Supra took no steps to block any Defendant's traffic and continued to accept such Defendant's traffic with knowledge that such Defendants did not feel obligated to pay the stated per minute charges. Supra had an affirmative obligation to mitigate its damages by declining to continue to accept the traffic and is barred from collecting from any Defendant having failed to do so.

COUNTERCLAIM

1. This Court has subject matter over this counterclaim pursuant to 47 U.S.C. § 207, 47 U.S.C. § 401(b), 28 U.S.C. § 1331 and 28 U.S.C. § 1332.

2. As Supra alleges, there is an affirmative statutory obligation for a local exchange carrier (LEC) "to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 U.S.C. § 251 (b)(5). Moreover, the rules and

- Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting carrier. 47 C.F.R. § 51.703(a)
- Rates for transport and termination of telecommunications traffic shall be symmetrical. 47 C.F.R § 51.711(a).
- In cases where neither carrier is an incumbent LEC (an ILEC) -- which is the case here because neither any of the Defendants nor Supra is an ILEC – a state commission shall establish the symmetrical rates for transport and termination based upon the larger carrier's forward looking costs.

The rates that Supra seeks to impose are not reciprocal, are not symmetrical and are not based upon forward looking costs. MetroPCS California/Florida, Inc. has suffered injury by virtue of the effort of Supra to collect unlawful rates.

3. Pursuant to 47 U.S.C § 201 (a) and 47 C.F.R § 51.100, Supra is required to provide interconnection services and termination services upon reasonable request therefore. MetroPCS California/Florida, Inc. has requested interconnection services pursuant to a reciprocal compensation arrangement with Supra. The request by MetroPCS California/Florida, Inc. is reasonable. Supra has refused to agree to just and reasonable terms, in violation of 47 U.S.C. § 201 and § 251(b)(5). MetroPCS California/Florida, Inc. has suffered injury by virtue of the .refusal of Supra to establish such relationship.

4. Pursuant to 47 U.S.C § 202(b), all charges, practices, classifications and regulations for and in connection with the common carrier services provided by Supra to MetroPCS California/Florida, Inc. must be just and reasonable, and MetroPCS California/Florida, Inc. cannot be subject to any unreasonable discrimination or preferences. The

unilateral imposition by Supra of non-reciprocal, non-symmetrical, non-cost-based rates on MetroPCS California/Florida, Inc. is not just and reasonable and is, therefore, unlawful. The filed rate doctrine does not empower Supra to charge an unlawful rate. And, on information and belief, Supra has imposed different charges upon carriers other than MetroPCS California/Florida, Inc. who are similarly situated. Failure of Supra to give MetroPCS California/Florida, Inc. rates as favorable as those offered to other carriers also is a violation of Section 5.1 of the tariff that Supra is seeking to enforce against Defendants. MetroPCS California/Florida, Inc. has suffered injury by virtue of the unreasonable, discriminatory and preferential policies of Supra.

5. Defendant MetroPCS California/Florida, Inc. has sought to enter into a reciprocal compensation agreement with Supra, as is its statutory right. Supra has, however, breached its statutory duty to enter into such an agreement.

6. Supra's failure to satisfy such duty has included its failure to respond to proposals from MetroPCS California/Florida, Inc. for lengthy periods. 47 C.F.R § 20.11 provides, in pertinent part:

> **§20.11 Interconnection to facilities of local exchange carriers.**
>
> (a) A local exchange carrier must provide the type of interconnection reasonably requested by a mobile service licensee or carrier, within a reasonable time after the request. . .
>
> (b) Local exchange carriers and commercial mobile radio service providers shall comply with principles of mutual compensation.
>
> (1) A local exchange carrier shall pay reasonable compensation to a commercial mobile radio service provider in connection with terminating traffic that originates on facilities of the local exchange carrier.

Supra has failed to provide to MetroPCS California/Florida, Inc. the type of reciprocal compensation arrangement reasonably requested by MetroPCS California/Florida, Inc. Supra has failed to provide the reciprocal compensation agreement requested by MetroPCS California/Florida, Inc. within a reasonable time. Supra has failed to abide by the principle of mutual compensation and has failed to pay MetroPCS California/Florida, Inc. reasonable compensation for termination services provided by MetroPCS California/Florida, Inc.

7. Supra has an affirmative obligation to negotiate in good faith with MetroPCS California/Florida, Inc. to establish a reasonable interconnection arrangement. The unilateral filing of a tariff governing wireless termination service that fails to provide for symmetrical cost-based rates constitutes a failure to bargain in good faith. MetroPCS California/Florida, Inc. is injured by the Supra actions.

8. To the extent that Supra has sought to establish wireless termination rates that are at variance from the requirements of the Telecom Act and the implementing regulations of the FCC, it is preempted by Federal law from doing so. The Constitution provides that the laws of the United States are the supreme law of the land, and the Supreme Court has declared that federal regulations have no less preemptive effect than federal statutes. And, the Supreme Court has upheld explicitly the adoption of national rules governing interconnection and has recognized the authority of the FCC to regulate interconnection involving wireless carriers. Under these circumstances, the effort of Supra to enforce unilaterally imposed wireless termination rates that have been filed locally -- but have received no state regulatory scrutiny or approval -- is unlawful.

9. The rules and regulations of the FCC prohibit a LEC from seeking to recover non-traffic sensitive loop costs as an element of a proper interconnection charge. On information and

belief, the rate that Supra is seeking to collect from MetroPCS California/Florida, Inc. includes non-recoverable non-traffic-sensitive loop costs in violation of federal law.

10. It is MetroPCS California/Florida, Inc.'s position that in the absence of the execution of different reciprocal compensation agreement, the parties were subject to a "bill and keep" arrangement, in which neither would bill or collect from the other charges for transportation and termination.

11. However, if the parties are not subject to a bill and keep arrangement, then MetroPCS California/Florida, Inc., is entitled to compensation from Supra. MetroPCS California/Florida, Inc. is entitled to compensation from Supra at a rate at least equal to, if not greater than, any rate to which Supra may be entitled. Further, it is alleged that the traffic volume for which Supra is obligated is equivalent to, or may exceed, any volume of traffic for which Supra may be entitled to recover.

12. Supra has received the benefit of such transport and termination, all the while realizing that it was obligated to compensate MetroPCS California/Florida, Inc. for same. The amounts which Supra is this obligated to pay to MetroPCS California/Florida, Inc. would offset, in whole or substantial part, any amounts that would otherwise be due from any Defendant to Supra

13. MetroPCS California/Florida, Inc. has provided services to Supra and such services were performed under the circumstances in which the parties understood and intended that compensation would be paid.

14. MetroPCS California/Florida, Inc. has conferred a benefit on Supra; Supra has knowledge of the benefit; Supra has accepted or retained the benefit; and circumstances are such that it would be inequitable for Supra to retain the benefit without paying fair value.

15. Supra's network is interconnected with the network of MetroPCS California/Florida, Inc. in such a manner that Supra can expect to receive access services; Supra has failed to take reasonable steps to prevent the receipt of such access services; and Supra has in fact received such services.

16. Defendant MetroPCS California/Florida, Inc. is entitled to recover its reasonable and necessary attorneys fees in connection with this action.

17. All conditions precedent to MetroPCS California/Florida, Inc.'s right to recover have been performed or have occurred.

18. It is Defendants' position that the subject matter of this lawsuit relates to MetroPCS California/Florida, Inc., and not the other Defendants. To the extent that it may be determined that another Defendant is a proper party, and that the Court has jurisdiction over such entity, such other Defendant joins in the allegations made herein on behalf of MetroPCS California/Florida, Inc.

WHEREFORE, Defendants pray that Plaintiff take nothing by way of this suit; that all claims be dismissed with prejudice; that offset or affirmative relief be awarded against Supra; for recovery of attorneys' fees; for recovery of costs of court; and for such other and further relief to which Defendants may be justly entitled.

Respectfully submitted,
ANDREWS KURTH LLP

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of foregoing ***Defendants' First Amended Answer to Plaintiff's Original Complaint, and Counterclaim*** has been forwarded by regular mail on April 25, 2005, to:

Steve Chaiken
2901 SW 149th Avenue
Suite 300
Miramar, FL 33027-4153
Facsimile: (305) 443-1078
Steve.Chaiken@STIS.com

_____
Charles Perry

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI, FLORIDA

SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.,	§	
Plaintiff,	§	**CASE NO. 05-20291-CIV-KING**
vs.	§	**MAG. O'SULLIVAN**
METROPCS, INC., METROPCS WIRELESS, INC., and METROPCS CALIFORNIA/FLORIDA, INC.,	§	
Defendants.	§	

DEFENDANTS' RESPONSE TO PLAINTIFF'S
FIRST REQUEST FOR ADMISSIONS

TO: Plaintiff Supra Telecommunications and Information Systems, Inc., by and through its attorneys of record, Steve Chaiken, 2901 SW 149th Avenue, Suite 300, Miramar, FL 33027-4153.

COME NOW, Defendants MetroPCS, Inc., MetroPCS Wireless, Inc., and MetroPCS California/Florida, Inc. and file this their response to Plaintiff's First Request for Admissions, as follows:

EXHIBIT
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Respectfully submitted,

ANDREWS KURTH LLP

By _____

Charles Perry (admitted *pro hac vice*)
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 10, 2005 a true and correct copy of foregoing instrument been sent regular mail to:

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2901 SW 149th Avenue
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and that pursuant to such interconnection agreement, BellSouth has made payment to MetroPCS California/Florida, Inc. for local (intraMTA) calls that appeared to have originated on the BellSouth network and terminated on MetroPCS California/Florida, Inc.'s network. Defendants otherwise deny this request.

REQUEST FOR ADMISSIONS NO. 128: Admit that METRO PCS has received payment from BellSouth for Exchange Access services provided by METRO PCS for UNE-P lines.

RESPONSE:

Defendants incorporate by reference the Objections to Definitions, set forth above. Subject to and without waiving the foregoing, Defendants admit that MetroPCS California/Florida, Inc. has previously entered into an interconnection agreement with BellSouth, and that pursuant to such interconnection agreement, BellSouth has made payment to MetroPCS California/Florida, Inc. for local (intraMTA) calls that appeared to have originated on the BellSouth network and terminated on MetroPCS California/Florida, Inc.'s network. Based on the information known or readily obtainable to Defendants, after reasonable inquiry, Defendants are unable to either admit or deny whether any of the local (intraMTA) calls that appeared to have originated on the BellSouth network and which were terminated on MetroPCS California/Florida, Inc.'s network were actually UNE-P traffic. Defendants otherwise deny this request.

REQUEST FOR ADMISSIONS NO. 129: Admit that METRO PCS has received payment from BellSouth for Exchange Access services provided by METRO PCS for Supra UNE-P lines

RESPONSE:

Defendants incorporate by reference the Objections to Definitions, set forth above. Subject to and without waiving the foregoing, Defendants admit that MetroPCS

California/Florida, Inc. has previously entered into an interconnection agreement with BellSouth, and that pursuant to such interconnection agreement, BellSouth has made payment to MetroPCS California/Florida, Inc. for local (intraMTA) calls that appeared to have originated on the BellSouth network and terminated on MetroPCS California/Florida, Inc.'s network. Based on the information known or readily obtainable to Defendants, after reasonable inquiry, Defendants are unable to either admit or deny whether any of the local (intraMTA) calls that appeared to have originated on the BellSouth network and which were terminated on MetroPCS California/Florida, Inc.'s network were actually Supra UNE-P traffic. Defendants otherwise deny this request.

REQUEST FOR ADMISSIONS NO. 130: Admit that METRO PCS has data which evidences that there is an imbalance in the percentage of traffic originated by METRO PCS and terminated by Supra and the percentage of traffic originated by Supra and terminated by METRO PCS.

RESPONSE:

Defendants incorporate by reference the Objections to Definitions, set forth above. Defendants object to this request as vague and ambiguous, in that it references "data" which is neither attached to the requests, nor otherwise specifically identified, such that any response cannot be connected to or identified with any particular "data" or other document. Subject to and without waiving the foregoing, Defendants admit that by reference solely to documents or data currently in their possession, the documents, standing alone, do not conclusively prove that there exists either a traffic balance or imbalance between the minutes of use for local (intraMTA) calls originated on MetroPCS California/Florida, Inc. network which terminate on Supra's network and the minutes of use for local (intraMTA) calls originated on Supra's network which

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Plaintiff,	§	CASE NO. 05-20291-CIV-KING
vs.	§	MAG. O'SULLIVAN
METROPCS, INC., METROPCS WIRELESS, INC., and METROPCS CALIFORNIA/FLORIDA, INC.,	§	
Defendants.	§	

RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS BY SUPRA TO DEFENDANTS

TO: Plaintiff Supra Telecommunications and Information Systems, Inc., by and through its attorneys of record, Steve Chalken, 2901 SW 149th Avenue, Suite 300, Miramar, Florida 33027-4153.

Defendants MetroPCS, Inc., MetroPCS Wireless, Inc. MetroPCS California/Florida, Inc. serve this their Response to the First Request for Production of Documents by Supra to Defendants, as follows:

Each defendant objects to any obligation being imposed pursuant to Federal Rules of Bankruptcy Procedure 7034, as same is not applicable to this case. Defendants will provide documents for inspection and copying at a mutually agreeable time and place.

Respectfully submitted,

ANDREWS KURTH LLP

By: _____

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on May 10, 2005 a true and correct copy of foregoing instrument been sent via regular mail to:

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Charles Perry

the existence of the attorney client and/or work product privilege within the scope of Local Rule 26.1.G.3(c) in response to this request.

To the extent documents have been identified as responsive to this request which are protected by the attorney-client or work product privilege, but are beyond the scope of Local Rule 26.1.G.3(c), such documents have been included on Defendants' privilege log. Defendants reserve the right to supplement such privilege log in the event additional documents are subsequently identified as responsive to this request.

Defendants assert the protection afforded to trade secret or other confidential or proprietary information, and reserve the right to produce such documents only after entry of and subject to the Agreed Protective Order, or such other order as may be appropriate.

REQUEST FOR PRODUCTION NO. 24: All documents which state, reference or reflect Supra traffic that has been transported or terminated on MetroPCS' network.

RESPONSE:

Defendants incorporate by reference the Objections to Definitions and Instructions set forth above. Defendants further object to the term "MetroPCS," as used in this request as ambiguous, in that it does not specify to which of the Defendants the term is intended to refer. Defendants object to this request because it places an undue burden or expense that outweighs its likely benefit, and can be obtained from Supra's own records, which would be more convenient, less burdensome and/or less expensive. Defendants further object to production of confidential customer information, including customer proprietary network information protected by 47 U.S.C. § 222. Subject to and without waiving the foregoing, Defendants respond as follows:

Defendants note that Supra's traffic cannot be distinguished from other LEC traffic, such as BellSouth traffic, which is being terminated on MetroPCS California/Florida, Inc.'s network in the State of Florida unless Supra provides the ten-digit telephone numbers assigned to its customers and the time periods for which such numbers have been assigned to Supra's customers. Subject to and without waiving the foregoing, MetroPCS California/Florida, Inc. would be amenable to conducting a sampling, for a mutually agreed period, of Supra's local (intraMTA) traffic terminated on MetroPCS California/Florida, Inc.'s network, following MetroPCS California/Florida, Inc.'s receipt of the ten-digit numbers assigned to Supra's customers and corresponding period during which they were assigned.

The other defendants do not originate or terminate local (intraMTA) calls in the State of Florida. To the extent this request could be construed to seek documents beyond those being produced as set forth above, same are beyond the proper scope of discovery under Fed. R. Civ, P. (b)(i); is vague ambiguous and overbroad, and seeks materials neither admissible in evidence nor reasonably calculated to lead to the discovery of admissible evidence.

Pursuant to Local Rule 26.1.G.3(c), preparation of a privilege log is not required for documents or oral communications withheld on the basis of a claim of privilege or work product protection for communications between a party and its counsel after commencement of the action and work product material created after commencement of the action. Defendants assert